

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bill Johnson,
Appellant,

Case No: 13R 028

v.

Decision and Order Affirming Adams
County Board of Equalization

Adams County Board of Equalization,
Appellee.

1. A Single Commissioner hearing was held on December 19, 2013, at Hamilton County Courthouse, 1111 13th , LL NE Corner, Aurora, Nebraska, before Commissioner Salmon.
2. Bill Johnson (the Taxpayer) was present at the hearing.
3. David Bergin, Deputy County Attorney, was present for the Adams County Board of Equalization (the County).
4. The Subject Property (Subject Property) is rural residential parcel improved with a 2,132 square foot single family dwelling, with a legal description of: Tr in SW ¼ 25-6-11 known as Grabill Acres, Adams County, Nebraska.

Background

5. The Adams County Assessor assessed the Subject Property at \$68,320 for tax year 2013.
6. The Taxpayer protested this value to the Adams County Board of Equalization and requested an assessed value of \$66,205 for tax year 2013.
7. The Adams County Board of Equalization determined that the assessed value of the Subject Property was \$68,320 for tax year 2013.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
14. The Taxpayer asserted that the Land Valuation of the Subject Property was not equalized with the land value of several other rural residential properties in Adams County. He provided the Commission with a property record card for an alleged comparable containing 5.28 acres while the Subject Property is 2.05 acres. He asserted that the land valuation on the alleged comparable was valued at \$4,697 per acre compared to the Subject Property’s land value at \$9,629 per acre. He asserted that every rural residential property should have the same value per acre without consideration of size.
15. The Appraiser for the Adam’s County Assessor’s office explained that the land valuation on all the rural acreages was valued on the same basis. He provided the Commission with a spreadsheet and noted that the first acre was valued at \$13,860, 2nd acre at \$7,150 and remaining acres at \$1,155 an acre. He Listed several properties and noted that they had all been valued equally. The Commission notes that the alleged comparable and Subject Property were valued using this formula. The Appraiser stated that the valuations were set using the sales comparison approach. He stated that all rural residential acreages, 10 acres or under, were valued using this formula.
16. The Commission notes that the formula is supported appraisal principles. Land uses have an optimal size.⁸ Surplus land is “[l]and that is not currently needed to support the

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ See, Appraisal Institute, *The Appraisal of Real Estate*, at 200 (14th ed. 2013).

existing use, but cannot be separate from the property and sold off for another use.”⁹ As the size of a parcel exceeds its optimal size, each additional acre may be worth less.¹⁰

17. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
18. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Adams County Board of Equalization determining the value of the Subject Property for tax year 2013, is Affirmed.
2. That the Taxable value of the Subject Property for tax year 2013 is:

Land	\$21,070
<u>Improvements</u>	<u>\$47,250</u>
Total	\$68,320

3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on December 27, 2013.

Signed and Sealed: December 27, 2013

Nancy J. Salmon, Commissioner

⁹ Appraisal Institute, *The Appraisal of Real Estate*, at 200 (14th ed. 2013).

¹⁰See, *Id.*